



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-S-, INC.

DATE: OCT. 7, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development and consulting business, seeks to employ the Beneficiary as an Oracle EBS functional consultant. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage. On appeal the Petitioner asserts that the Director did not properly consider the documentation provided and contends that it has the ability to pay the proffered wage. The Petitioner indicated on the appeal form that it would submit a brief and/or additional documentation within 30 days, but no such materials have been received.

Upon *de novo* review, we will withdraw the Director’s decision and remand the case for further consideration and the issuance of a new decision.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

To be eligible for the classification it requests for the beneficiary, a petitioner must establish that it has the ability to pay the proffered wage stated in the labor certification. As provided in the regulation at 8 C.F.R. § 204.5(g)(2):

The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [USCIS].

II. ANALYSIS

A. Petitioner's Ability to Pay the Proffered Wage

As indicated in the above regulation, the Petitioner must establish its continuing ability to pay the proffered wage from the priority date¹ of the petition onward. The priority date in this case is January 19, 2018. The labor certification states that the wage offered for the job of Oracle EBS functional consultant is \$103,272 per year. The Director found that the record did not demonstrate the Petitioner's ability to pay the proffered wage based on its federal income tax return for 2017. However, as the priority date occurred in 2018, that is the first year for which the Petitioner must demonstrate its ability to pay the proffered wage. When the record was before the Director, evidence of the Petitioner's ability to pay in 2018 was not available. Therefore we will remand the matter to the Director to request regulatory required evidence, as specified in 8 C.F.R. § 204.5(g)(2), of the Petitioner's ability to pay the proffered wage in 2018.

The Petitioner may also submit materials in support of the factors discussed in *Matter of Sonogawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967). In accord with *Sonogawa* the Director may consider the totality of the circumstances affecting the Petitioner's ability to pay the proffered wage.

B. Beneficiary's Educational Credentials

Beyond the decision of the Director, we note that the evidence of the Beneficiary's educational credentials does not include a complete copy of his academic record from the Indian university where he was awarded a Master of Technology (Computer Science & Engineering) degree in 2014. The pertinent regulation at 8 C.F.R. § 204.5(k)(3)(i)(A) states that an "official academic record" must be submitted to show that the Beneficiary "has a United States advanced degree or a foreign equivalent degree." In this case the Petitioner has submitted copies of the Beneficiary's degree certificate and the transcripts from the first two semesters of what appears to have been a four-

¹ The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. See 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied as of the priority date.

semester degree program. To complete the record, the Director should request the Petitioner to submit copies of the Beneficiary's third and fourth semester transcripts from his master's degree program.

III. CONCLUSION

For the reasons discussed above, we will remand this case to the Director for further consideration of the Petitioner's ability to pay the proffered wage from the priority date onward and to obtain the Beneficiary's complete academic record.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of A-S- Inc*, ID# 6578392 (AAO Oct. 7, 2019)